

Memphis and Shelby County of Tennessee which incorporate and/or implement the above-listed federal requirements; and SIP permitting programs for construction and operation of new and modified stationary sources.

2. The United States seeks an injunction ordering Cargill to comply with the above-cited Clean Air Act requirements and regulations promulgated thereunder, and civil penalties for Cargill's past and ongoing violations.

JURISDICTION AND VENUE

3. This Court has jurisdiction of the subject matter of this action pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345.

4. Venue is proper under 28 U.S.C. § 1391 (b) and (c), because Cargill's corporate headquarters and primary place of business are located within this District.

NOTICES

5. The United States has notified each of the state and county air authorities where the Cargill facilities are located of the violations alleged herein, pursuant to Section 113 of the Act, 42 U.S.C. § 7413.

6. The 30-day period established in Section 113 of the Act, 42 U.S.C. § 7413, between the notice provided by the United States and the commencement of this civil action has elapsed.

THE DEFENDANT

7. Cargill is a national agribusiness that owns and operates 24 facilities in 13 states which process corn, soybeans, and other oilseeds into value-added products used in the food, feed, ethanol and other industries.

8. Cargill's corporate headquarters is located in Minneapolis, Minnesota. Cargill is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

9. At all times relevant to this Complaint, Cargill owned and operated the following plants, certain of which are located at the same facility:

Blair, Nebraska
Bloomington, Illinois
Cedar Rapids, Iowa
Cedar Rapids East, Iowa
Cedar Rapids West, Iowa
Dayton, Ohio
Decatur, Alabama
Des Moines, Iowa
Dimmit, Texas
Eddyville, Iowa
Fayetteville, North Carolina
Gainesville, Georgia
Guntersville, Alabama
Hammond, Indiana
Iowa Falls, Iowa
Kansas City, Missouri
Lafayette, Indiana
Memphis, Tennessee
Raleigh, North Carolina
Sidney, Ohio
Sioux City, Iowa
Wahpeton, North Dakota
West Fargo, North Dakota
Wichita, Kansas

STATUTORY AND REGULATORY BACKGROUND

Prevention of Significant Deterioration

10. Section 109 of the Act, 42 U.S.C. § 7409, requires the Administrator of EPA to promulgate regulations establishing primary and secondary national ambient air quality standards ("NAAQS" or "ambient air quality standards") for certain criteria air pollutants. The primary

NAAQS are to be adequate to protect the public health, and the secondary NAAQS are to be adequate to protect the public welfare, from any known or anticipated adverse effects associated with the presence of the air pollutant in the ambient air.

11. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a State Implementation Plan ("SIP") that provides for the attainment and maintenance of the NAAQS.

12. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. These designations have been approved by EPA and are located at 40 C.F.R. Part 81. An area that meets the NAAQS for a particular pollutant is classified as an "attainment" area; one that does not is classified as a "non-attainment" area.

13. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration ("PSD") of air quality in those areas designated as attaining the NAAQS standards. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision-making process. These provisions are referred to herein as the "PSD program."

14. Section 165(a) of the Act, 42 U.S.C. § 7475(a), prohibits the construction and subsequent operation of a major emitting facility in an area designated as attainment unless a

PSD permit has been issued. Section 169(1) of the Act, 42 U.S.C. § 7479(1), defines “major emitting facility” generally as a source with the potential to emit 250 tons per year (“TPY”) or more of any air pollutant. In addition, Cargill’s ethanol plants are “chemical process plants” in accordance with Section 169(1) of the CAA, 42 U.S.C. § 7479(1), which defines “major emitting facility” for certain listed stationary sources as a source with the potential to emit 100 TPY or more of any air pollutant.

15. As set forth at 40 C.F.R. § 52.21(k), the PSD program generally requires a person who wishes to construct or modify a major emitting facility in an attainment area to demonstrate, before construction commences, that construction of the facility will not cause or contribute to air pollution in violation of any ambient air quality standard or any specified incremental amount.

16. As set forth at 40 C.F.R. § 52.21(a), any major emitting source in an attainment area that intends to construct a major modification must first obtain a PSD permit. “Major modification” is defined at 40 C.F.R. § 52.21(b)(2)(i) as meaning any physical change in or change in the method of operation of a major stationary source that would result in a significant net emission increase of any criteria pollutant subject to regulation under the Act. “Significant” is defined at 40 C.F.R. § 52.21(b)(23)(i) in reference to a net emissions increase or the potential of a source to emit any of the following criteria pollutants, at a rate of emissions that would equal or exceed any of the following: 40 tons per year (“TPY”) for NO_x; 40 TPY for VOC, 40 TPY for SO₂, 100 TPY for CO, 15 TPY for PM₁₀, and 25 TPY for PM, (hereinafter “criteria pollutants”).

17. As set forth at 40 C.F.R. § 52.21(j), a new major stationary source or a major modification in an attainment area shall install and operate best available control technology (“BACT”) for each pollutant subject to regulation under the Act that it would have the potential

to emit in significant quantities.

18. Section 161 of the Act, 42 U.S.C. § 7471, requires state implementation plans to contain emission limitations and such other measures as may be necessary, as determined under the regulations promulgated pursuant to these provisions, to prevent significant deterioration of air quality in attainment areas.

19. A state or regional air authority may comply with Section 161 of the Act either by being delegated by EPA the authority to enforce the federal PSD regulations set forth at 40 C.F.R. § 52.21, or by having its own PSD regulations approved as part of its SIP by EPA, which must be at least as stringent as those set forth at 40 C.F.R. § 51.166. All of the states and counties at issue here have either delegated or approved PSD programs.

Nonattainment Area New Source Review

20. Sections 110(a)(2)(C) and (I) of the Act, 42 U.S.C. § 7410(a)(2)(C) & (I), require that each SIP contain a program meeting the requirements of Part D of the Act or the pre-construction review and permitting of new and modified stationary sources located in or near areas designated as "nonattainment" for a criteria pollutant pursuant to section 107(d) of the Act, 42 U.S.C. § 7407(d).

21. EPA regulations at 40 C.F.R. § 51.165 require that each SIP contain such a program for pre-construction review and permitting of new and modified sources in or near designated nonattainment areas.

22. As reflected in the relevant sections of 40 C.F.R. Part 52, each of the state or regional air authorities at issue here has adopted such a program, and EPA has approved it into

the relevant SIP. In each case, the approved program regulates through the permitting process both the construction and operation of new and modified stationary sources in or near designated nonattainment areas. In some cases, the program requires the payment of emission fees in proportion to emission levels.

Minor New Source Review

23. Section 110(a)(2)(C) of the Act, 42 U.S.C. § 7410(a)(2)(C), requires that each SIP contain a basic program applicable to all areas of the state for the pre-construction review and permitting of new and modified minor stationary sources as necessary to assure attainment and maintenance of the NAAQS. A stationary source is considered minor if its potential to emit does not exceed the significant quantity established for each criteria pollutant.

24. EPA regulations at 40 C.F.R. § 51.160 require that each SIP contain such a generally applicable program for pre-construction review and permitting.

25. As reflected in the relevant sections of 40 C.F.R. Part 52, each of the states at issue here has adopted such a program, and EPA has approved it into the relevant SIP. In each case, the approved program regulates through the permitting process both the construction and operation of new and modified stationary sources. In some cases, the program requires the payment of emission fees in proportion to emission levels.

26. Each of Cargill's plants at issue here is subject in whole or in part to one or more minor new source construction and/or operating permits issued pursuant to such an approved program. Such permits contain emission limitations and other terms and conditions applicable to various criteria pollutants, including VOCs, NO_x, SO₂ and CO.

New Source Performance Standards

27. Section 111(b)(1)(A) of the CAA requires EPA to publish (and periodically revise) a list of categories of stationary sources including those categories that, in EPA's judgment, cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. Once a category is included on the list, Section 111(b)(1)(B) requires EPA to promulgate a federal standard of performance for new sources within the category, also known as a New Source Performance Standard ("NSPS"). 42 U.S.C. § 7411(b)(1)(A).

28. After promulgation of a NSPS, Section 111(e) makes it unlawful for any owner or operator of any new source subject to the NSPS to operate the source in violation of the standard. 42 U.S.C. § 7411(e).

29. EPA's regulations at 40 C.F.R. Part 60, Subpart A contain general provisions applicable to all NSPS sources, including the obligation to conduct performance tests at each subject source. Subpart A provides that a new standard of performance shall apply to any affected facility at which construction commenced after the promulgation of the standard, or if earlier, after the date of publication of a proposed standard. Subpart A of the EPA's NSPS regulations also requires operators to provide notice of the date of construction and operation of an affected facility. 40 C.F.R. § 60.7.

30. Cargill's plants identified in Paragraph 9 include "stationary source(s)" within the meaning of Sections 111(a)(3) of the Act, 42 U.S.C. §§ 7411(a)(3) and 7602(z).

31. Cargill's plants identified in Paragraph 9 include "new source(s)" as that term is defined at Section 111(a)(2) of the Act, 42 U.S.C. § 7411 (a)(2), and therefore subject to the

requirements of NSPS, Subpart A.

32. The following NSPS provisions are applicable to Cargill's facilities:

- a. Steam generating units under 40 C.F.R. Part 60, Subpart Db (Industrial-Commercial-Institutional Steam Generating Units);
- b. Steam generating units under 40 C.F.R. Part 60, Subpart Dc (Small Industrial-Commercial-Institutional Steam Generating Units);
- c. Storage vessels under 40 C.F.R. Part 60, Subpart Kb (Volatile Organic Liquid Storage Vessels);
- d. Process units under 40 C.F.R. Part 60, Subpart VV (Equipment Leaks of VOC);
- e. Grain terminal and storage elevators under 40 C.F.R. Part 60, Subpart DD (Standards of Performance for Grain Elevators);
- f. Stationary gas turbines under 40 C.F.R. Part 60, Subpart GG (Standards of Performance for Stationary Gas Turbines); and
- g. Affected facilities at coal preparation plants processing more than 200 tons per day under 40 C.F.R. Part 60, Subpart Y (Standards of Performance for Coal Preparation Plants).

33. The EPA's regulations at 40 C.F.R. Part 60, Subpart A, Section 60.2 define an "affected facility", with reference to a stationary source, as any apparatus to which a standard is applicable.

34. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), authorizes the United States to commence a civil action for the assessment of a civil penalty of up to \$25,000 per day for each violation whenever any person violates any requirement the CAA. This amount increases to

\$27,500 per day for violations occurring on and after January 31, 1997. See 40 C.F.R. § 19; and further increases to \$32,500 per day for each violation occurring on or after March 16, 2004, pursuant to 69 Fed. Reg. 7126 (February 13, 2004). Section 113(b) of the CAA also authorizes the United States to enjoin violations of the CAA.

The Emergency Planning and Community Right to Know Act

35. The Emergency Planning and Community Right to Know Act ("EPCRA"), contains provisions for reporting both accidental and nonaccidental releases of toxic chemicals. 42 U.S.C. § 11023. Section 313 of EPCRA, 42 U.S.C. § 11023 requires certain manufacturers, processors and users of designated toxic chemicals to annually report emissions of those chemicals to the air, water, and land. These annual reports must be sent to the EPA and to designated State agencies.

36. The Administrator of EPA is authorized to promulgate regulations to carry out the provisions of EPCRA. 42 U.S.C. § 11048. On February 16, 1988, EPA published final toxic chemical release reporting regulations, the Toxic Chemical Release Inventory Reporting Form (EPA Form R) and Instructions (40 C.F.R. Part 372). 53 Fed. Reg. 4525 (1988). The following state agencies are also designated to receive copies of the EPA Form Rs: Alabama Department of Environmental Management; Georgia Environmental Protection Division; Illinois Environmental Protection Agency; Indiana Department of Environmental Management, Iowa Department of Natural Resources; Nebraska Department of Environmental Quality; North Dakota Department of Health; North Carolina Department of Environment and Natural Resources; Ohio Environmental Protection Agency; and the Tennessee Department of Environmental Conservation.

37. Pursuant to Section 313(a) of EPCRA and 40 C.F.R. § 372.30, affected owners or

operators of a facility are required to complete a Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (1-90) (Form R), for each toxic chemical listed under 40 C.F.R.

§ 372.65 that was manufactured, imported, processed, or otherwise used in quantities exceeding the established toxic chemical thresholds set forth in 40 C.F.R. § 372.25.

38. Section 313 (b) of EPCRA provides that this reporting requirement is applicable to facilities that have ten or more full-time employees, are covered in a Standard Industrial Classification ("SIC"); and manufactured, imported, processed or otherwise used a toxic chemical listed under Section 313 (c) of EPCRA and 40 C.F.R. § 372.65 in excess of the threshold quantity. Threshold quantities for toxic chemicals are described at Section 313 (f) of EPCRA and 40 C.F.R. § 372.25.

39. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) provides that the Administrator of EPA may assess civil administrative penalties for violations of section 313 of EPCRA. Any person who violates any requirement of section 313 is liable for a civil penalty in an amount not to exceed \$25,000 for each violation prior to January 31, 1997, and \$27,500 per day for each violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701. This amount further increases to \$32,500 per day for each violation occurring on or after March 16, 2004, pursuant to 69 Fed. Reg. 7126 (February 13, 2004). Each day a violation continues constitutes a separate violation.

FIRST CLAIM FOR RELIEF
(Oilseed Plants - PSD Violations)

40. Paragraphs 1 through 39 are realleged and incorporated herein by reference.

41. At all relevant times, Cargill owned and operated the following fifteen (15) plants

for processing soybeans, corn germ, cottonseeds, canola and sunflower seeds:

- a. Cedar Rapids East, Iowa
- b. Des Moines, Iowa
- c. Fayetteville, North Carolina
- d. Gainesville, Georgia
- e. Guntersville, Alabama
- f. Iowa Falls, Iowa
- g. Kansas City, Missouri
- h. Raleigh, North Carolina
- i. Sidney, Ohio
- j. Sioux City, Iowa
- k. Wichita, Kansas
- l. West Fargo, North Dakota
- m. Cedar Rapids West, Iowa
- n. Lafayette, Indiana
- o. Bloomington, Illinois

42. Cargill produces crude vegetable oil and meal products by removing oil from the oilseeds identified in Paragraph 40 above. Some oil extraction is accomplished through direct contact with an organic solvent.

43. Cargill's oilseed plants which use solvent extraction for vegetable oil production are major sources of n-hexane, a hazardous air pollutant ("HAP") as defined by Section § 112(b)(1) of the Act, 42 U.S.C. § 7412 (b)(1), and are therefore subject to the requirements of 40 C.F.R. Part 63, Subpart GGGG (vegetable oil production NESHAP).

44. Cargill's oilseed plants identified in Paragraph 40 are major sources of VOCs, subject to the PSD requirements of 40 C.F.R. Part 52.

45. Sources of VOC and HAP emissions at Cargill's oilseed plants include the solvent recovery system, meal dryers, coolers, residual solvent in meal and oil products, leaking equipment components, storage tanks, wastewater, and plant operations during process startup, shutdowns and malfunctions. VOCs are a precursor to ozone, which is a criteria air pollutant.

46. Cargill operates combustion sources at or in support of all oilseed plants identified in Paragraph 41, such as industrial boilers, process heaters and burners, which are sources of NO_x, PM and PM₁₀, CO and SO₂ emissions.

47. EPA has conducted investigations of Cargill's oilseed facilities, which included site inspections, review of permitting history and emissions data, and analysis of other relevant information obtained from Cargill concerning construction and operation of the oilseed facilities.

48. The United States issued Notices of Violation related to VOC emissions for Cargill's Lafayette, Indiana oilseeds facility on May 2, 2002, and Cargill's Bloomington, Illinois oilseeds facility on September 9, 2002.

49. The United States alleges the following based on the results of EPA's investigation, information and belief:

50. Section 169(1) of the CAA, 42 U.S.C. § 7479(1), defines "major emitting facility" as a source with the potential to emit 250 TPY or more of any air pollutant. Cargill's oilseed facilities are major emitting facilities with the potential to emit in excess of 250 TPY of one or more criteria air pollutants, or Cargill subsequently modified each facility to increase its emission of one or more criteria air pollutant over the 250 TPY threshold, which is defined as a "major modification" pursuant to 40 C.F.R. § 52.21(b)(1)(i)(c).

51. Since its initial construction or major modification of the oilseed facilities, Cargill has been in violation of Section 165(a) of the CAA, 42 U.S.C. § 7475(a), and 40 C.F.R. § 52.21, and the corresponding state implementation plans, by failing to undergo PSD review for numerous modifications which caused significant emissions increases of criteria pollutants, by failing to obtain a permit, and failing to install the best available control technology for control of

such criteria air pollutants.

52. Unless restrained by an Order of the Court, these violations of the CAA and the implementing regulations are likely to continue. As provided in 42 U.S.C. § 7413(b), Cargill's violations, as set forth above, subject it to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Act prior to January 31, 1997, and \$27,500 per day for each violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701. This amount further increases to \$32,500 per day for each violation occurring on or after March 16, 2004, pursuant to 69 Fed. Reg. 7126 (February 13, 2004). Each day a violation continues constitutes a separate violation.

SECOND CLAIM FOR RELIEF
(Corn Mill Plants - PSD violations)

53. Paragraphs 1 through 39 are realleged and incorporated herein by reference.

54. Cargill owns and operates the following nine (9) wet corn mill plants for the production of corn products, including ethanol:

- a. Blair, Nebraska
- b. Cedar Rapids, Iowa
- c. Dayton, Ohio
- d. Decatur, Alabama
- e. Dimmitt, Texas
- f. Eddyville, Iowa
- g. Hammond, Indiana
- h. Memphis, Tennessee
- i. Wahpeton, North Dakota

55. Cargill's corn processing plants produce a number of products from corn, including starch, sweeteners, germ, ethanol, and animal feed. The manufacturing process at Cargill's corn processing

plants results in emissions of significant quantities of regulated air pollutants, including NO_x, CO, PM, SO₂, VOCs and HAPs. The primary sources of these emissions are the dryers, carbon furnaces, fermentation units, boilers, and ethanol load-out systems. These plants are subject to the PSD requirements of 40 C.F.R. Part 52 and applicable SIP requirements.

56. Cargill operates combustion sources at all corn mill plants identified in Paragraph 54, such as industrial boilers, process heaters and burners, which are sources of NO_x, PM and PM₁₀, CO and SO₂ emissions.

57. EPA has conducted investigations of Cargill's corn mill plants, which included site inspections, review of permitting history and emissions data, and analysis of other relevant information obtained from Cargill concerning construction and operation of the corn mill plants.

58. The United States issued Notices of Violations for all nine of Cargill's corn processing facilities on August 12, 2003.

59. The United States alleges the following based on the results of EPA's investigation, information and belief:

60. Section 169(1) of the CAA, 42 U.S.C. § 7479(1), defines "major emitting facility" as a source with the potential to emit 250 TPY or more of any air pollutant. Cargill's corn mill plants are major emitting facilities with the potential to emit in excess of 250 TPY of one or more criteria pollutants, or Cargill subsequently modified each facility to increase its emission of one or more criteria pollutant over the 250 TPY threshold, which is defined as a "major modification" pursuant to 40 C.F.R. § 52.21(b)(1)(i)(c).

61. Since its initial construction or major modification of the corn mill plants, Cargill has been in violation of Section 165(a) of the CAA, 42 U.S.C. § 7475(a), and 40 C.F.R. § 52.21, and the

corresponding state implementation plans, by failing to undergo PSD review for all emission sources, by failing to obtain a permit, and failing to install the best available control technology for the control of all criteria pollutants that it had the potential to emit in significant amounts.

62. Unless restrained by an Order of the Court, these violations of the CAA and the implementing regulations are likely to continue.

63. As provided in 42 U.S.C. § 7413(b), Cargill's violations, as set forth above, subject it to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Act prior to January 31, 1997, and \$27,500 per day for each violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701. This amount further increases to \$32,500 per day for each violation occurring on or after March 16, 2004, pursuant to 69 Fed. Reg. 7126 (February 13, 2004). Each day a violation continues constitutes a separate violation.

THIRD CLAIM FOR RELIEF **(NSPS violations)**

64. Paragraphs 1 through 39 are realleged and incorporated herein by reference.

65. The Cargill facilities identified in Paragraph 9 include "new sources" as that term is defined at Section 111(a)(2) of the Act, 42 U.S.C. § 7411 (a)(2), which are "affected facilities" that are subject to the performance standards of NSPS.

66. Cargill owns and operates industrial-commercial-institutional steam generating units that commenced construction, modification, or reconstruction after June 19, 1984, with the heat input capacity from fuels combusted in the steam generating unit of greater than 29 Megawatts ("MW")

(100 million Btu/hour).

67. Cargill's industrial-commercial-institutional steam generating units identified in Paragraph 66, are therefore subject to the performance standards of 40 C.F.R. Part 60, Subpart Db, sections 60.40b through 60.49b.

68. Cargill owns and operates small industrial-commercial-institutional steam generating units that commenced construction, modification, or reconstruction after June 9, 1989, with the heat input capacity from fuels combusted in the steam generating unit of 29 MW (100 million Btu/hour) or less, but greater than or equal to 2.9 MW (10 million Btu/hour).

69. Cargill's industrial-commercial-institutional steam generating units identified in Paragraph 68, are therefore subject to the performance standards of 40 C.F.R. Part 60, Subpart Dc, sections 60.40c through 60.48c.

70. Cargill owns and operates volatile organic liquid storage vessels, including petroleum liquid storage vessels, for which construction, reconstruction, or modification commenced after July 23, 1984.

71. Cargill's volatile organic liquid storage vessels identified in Paragraph 70, including petroleum liquid storage vessels, are therefore subject to the performance standards set forth in 40 C.F.R. Part 60, Subpart Kb, sections 60.110b through 60.117b.

72. Cargill owns and operates equipment in VOC service for the manufacture of synthetic organic chemicals, which commenced construction or modification after January 5, 1981.

73. Cargill's equipment identified in Paragraph 72 is therefore subject to the performance standards of 40 C.F.R. Part 60, Subpart VV.

74. Cargill owns and operates grain terminals and storage elevators which commenced

construction, modification, or reconstruction after August 3, 1978.

75. Cargill's grain storage elevators identified in Paragraph 74 are therefore subject to the performance standards under 40 C.F.R. Part 60 Subpart DD, Sections 60.300 through 60.304.

76. Cargill owns and operates stationary gas turbines which commenced construction or modification, or reconstruction after October 3, 1977.

77. Cargill's stationary gas turbines identified in Paragraph 76 are therefore subject to the performance standards under 40 C.F.R. Part 60, Subpart GG.

78. Cargill owns and operates coal preparation plants which process more than 200 tons per day.

79. Cargill's coal preparation plants commenced construction or modification after October 24, 1974.

80. Cargill's coal preparation plants identified in Paragraph 78 are therefore subject to the performance standards under 40 C.F.R. Part 60 Subpart Y, sections 60.250 through 60.254.

81. EPA has conducted investigations of one or more of Cargill's NSPS affected facilities, identified in Paragraphs 66 through 80, which included site inspections, review of permitting history and emissions data, and analysis of other relevant information concerning Cargill's construction and operation of these facilities. Based on the results of EPA's investigation, information and belief:

82. Cargill has failed and continues to fail to meet the emissions testing, emissions monitoring, operations monitoring, emissions limits, recordkeeping and reporting standards set forth in NSPS 40 C.F.R. Part 60, Subparts Db, Dc, DD, Kb, GG, VV, and Y, in violation of Section 111 or the CAA.

83. Unless restrained by an Order of the Court, these violations of the CAA and the implementing regulations are likely to continue.

84. As provided in 42 U.S.C. § 7413(b), Cargill's violations, as set forth above, subject it to

injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Act prior to January 31, 1997, and \$27,500 per day for each violation after January 30, 1997, pursuant to the *Federal Civil Penalties Inflation Adjustment Act of 1990*, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701. This amount further increases to \$32,500 per day for each violation occurring on or after March 16, 2004, pursuant to 69 Fed. Reg. 7126 (February 13, 2004). Each day a violation continues constitutes a separate violation.

FIFTH CLAIM FOR RELIEF
(Minor NSR Violations)

85. Paragraphs 1 through 39 are realleged and incorporated herein by reference.

86. EPA has conducted investigations of Cargill's plants as listed and described above, which included site inspections, review of permitting history and emissions data, and analysis of other relevant information obtained from Cargill concerning construction and operation of such plants. The United States alleges the following based on the results of EPA's investigation, information and belief:

87. Since initial construction at such plants, Cargill has generated emissions of various criteria air pollutants and has engaged in diverse construction activities involving changes in such emissions, air quality impacts, or both.

88. By operating such plants, Cargill has violated the minor source permitting programs that EPA has approved into the relevant SIP pursuant to section 110(a)(2)(C), 42 U.S.C. § 7410(a)(2)(C), and 40 C.F.R. § 51.160, by exceeding the limits, terms and conditions in permits issued pursuant to such programs, particularly with respect to VOCs and CO.

89. By performing certain construction activities, Cargill has violated the minor source permitting

programs that EPA has approved into the relevant SIP pursuant to section 110(a)(2)(C), 42 U.S.C. § 7410(a)(2)(C), and 40 C.F.R. § 51.160, by failing to apply for and obtain necessary permits prior to construction, by failing to represent as necessary in its applications the emission levels or air quality consequences of proposed construction, by failing to provide sufficient information for full assessment of emission fees, or some combination of thereof.

90. Unless restrained by an Order of the Court, these violations of the Act and implementing regulations are likely to continue.

91. As provided in 42 U.S.C. § 7413(b), Cargill's violations, as set forth above, subject it to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Act prior to January 31, 1997, and \$27,500 per day for each violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701; this amount further increases to \$32,500 per day for each violation occurring on or after March 16, 2004, pursuant to 69 Fed. Reg. 7126 (February 13, 2004). Each day a violation continues constitutes a separate violation.

SIXTH CLAIM FOR RELIEF **EPCRA Violations**

92. Paragraphs 1 through 39 are realleged and incorporated herein by reference.

93. Pursuant to Section 313(a) of EPCRA and 40 C.F.R. § 372.30, an affected owner or operator of a facility is required to complete a Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (1-90) ("Form R"), for each toxic chemical listed under 40 C.F.R. § 372.65 that was manufactured, imported, processed, or otherwise used in quantities exceeding the established toxic

chemical thresholds set forth in 40 C.F.R. § 372.25.

94. Certain Cargill facilities are included in the industrial organic chemical sector which is assigned by the EPA a Standard Industrial Classification Code of 2869. These facilities include, but are not limited too:

- a. Eddyville, Iowa.
- b. Blair, Nebraska.

95. During the calendar years 1999 through 2004, Cargill manufactured or used one or more toxic chemicals at one or more of its facilities listed in the preceding paragraph in excess of the reporting quantity specified in the EPCRA regulations. (See, 40 C.F.R. § 372.25). Therefore, Cargill was required to include information on any release of such toxic chemicals in its annual Form R for each affected facility. However, Cargill failed to report releases of these toxic chemicals in its Form Rs which were submitted for the years 1999 through 2004 for one or more of its facilities listed in the preceding paragraph. Therefore, Cargill violated Section 313 of EPCRA, 42 U.S.C. § 11023, by failing to submit a complete toxic chemical release form for one or more of Cargill's facilities.

96. As provided by Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) Cargill's violations as set forth above, subject it to civil administrative penalties in an amount not to exceed \$25,000 per day for each day of violation and \$27,500 per day for each violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701; this amount further increases to \$32,500 per day for each violation occurring on or after March 16, 2004, pursuant to 69 Fed. Reg. 7126 (February 13, 2004). Each day a violation continues constitutes a separate violation.

SEVENTH CLAIM FOR RELIEF

Nonattainment New Source Review

97. Paragraphs 1 through 39 are realleged and incorporated herein by reference.

98. One or more of Cargill's plants at issue is located in or near a designated nonattainment area and emits one or more pollutants for which the area was designated nonattainment, and may be subject in whole or in part to one or more construction and/or operating permits issued pursuant to such an approved program, including emission limitations and other terms and conditions applicable to criteria pollutants such as VOCs and CO.

99. EPA has conducted investigations of Cargill's plants as listed and described above, which included site inspections, review of permitting history and emissions data, and analysis of other relevant information obtained from Cargill concerning construction and operation of such plants. The United States alleges the following based on the results of EPA's investigation, information and belief:

100. Since initial construction at one or more plants located in or near designated nonattainment areas, Cargill has operated such plant or plants so as to generate emissions of one or more pollutants for which the area or areas are designated nonattainment, and has engaged in construction activities involving changes in such emissions, air quality impacts, or both.

101. As such, Cargill has violated the nonattainment-area permitting programs that EPA has approved into the relevant SIP pursuant to section 110(a)(2)(C) and (I), 42 U.S.C. § 7410(a)(2)(C) & (I), and 40 C.F.R. § 51.165, by failing to comply with limits, terms and conditions in permits issued pursuant to such programs; by failing to apply for and obtain necessary permits prior to construction; by failing to represent as necessary in its applications the emission levels or air quality consequences

of proposed construction; by failing to provide sufficient information for full assessment of emission fees, or some combination of thereof.

102. Unless restrained by an Order of the Court, these violations of the Act and implementing regulations are likely to continue.

103. As provided in 42 U.S.C. § 7413(b), Cargill's violations, as set forth above, subject it to injunctive relief and civil penalties in an amount not to exceed \$25,000 per day for each day of violation and \$27,500 per day for each violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701; this amount further increases to \$32,500 per day for each violation occurring on or after March 16, 2004, pursuant to 69 Fed. Reg. 7126 (February 13, 2004). Each day a violation continues constitutes a separate violation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States, respectfully requests that this Court:

- 1.) Order Cargill to immediately comply with the state and federal statutory and regulatory requirements cited in this Complaint, under the Clean Air Act;
- 2.) Order Cargill to take appropriate measures to mitigate the effects of its violations;
- 3.) Assess civil penalties against Cargill for up to the amounts provided in the applicable statutes; and
- 4.) Grant the United States such other relief as this Court deems just and proper.

Respectfully submitted,

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